

# NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

## NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 16. BOARD OF MEDICAL EXAMINERS

##### PREAMBLE

1. **Register citation and date for the original Notice of Proposed Rulemaking:**

4 A.A.R. 2305, July 23, 1999.

**Previous notices appearing in the Register addressing the proposed rule:**

Notices of Rulemaking Docket Opening: 5 A.A.R. 2061, June 25, 1999.

2. **Sections Affected**

**Rulemaking Action**

R4-16-102

Amend

R4-16-106

New Section

R4-16-107

New Section

R4-16-108

New Section

3. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 32-1403(A)(8) and 32-1404(D)

Implementing statute: A.R.S. §§ 41-1062(B), 41-1092.09, 32-1425.01(A)(3), 32-1427(A), and 32-1429(A)(2)

4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Dominick Spatafora, Legislative and Regulatory Liaison

Address: Arizona Board of Medical Examiners  
1651 E. Morten, Suite 210  
Phoenix, AZ 85020

Telephone: (602) 255-3751, Ext. 2712

Fax: (602) 870-5297

5. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board is initiating rulemaking for 2 reasons. First, rulemaking action on R4-16-102 incorporates the recommendations made in a recent 5-year-rule review. Recommendations include amending the rule to be consistent with current rulewriting standards and conforming it to current law. The Court determined that the appellant was entitled to 15 days within which to file a request for rehearing instead of the 10 days allowed by rule. Second, proposed rules are created that prescribe: (1) licensing application forms to practice medicine, (2) applications for Pro Bono registration, and (3) applications for locum tenens registration. Although these application forms exist, were approved by the Board, and are currently in use, the Board is prescribing them in rule to address a recent statement made by the Governor's Regulatory Review Council.

6. **An explanation of the substantial change which resulted in this supplemental notice:**

After a thorough review of the amended R4-16-102 proposed rule, it was determined that the rule was confusing and lacked certain necessary elements. Therefore, the amended proposed rule has been rewritten in a more organized manner and includes the elements that appeared to be lacking. R4-16-106 through R4-16-108 needed to be significantly reorganized. They are now much more concise, clear, and understandable. Although no substantive changes were included, the Board felt as though the significant reorganizational changes demanded public notice.

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7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The preliminary summary of the economic, small business, and consumer impact statement:**

The Board does not anticipate an economic, small business, or consumer impact related to, or created by, the proposed rules.

9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Dominick Spatafora, Legislative and Regulatory Liaison

Address: Arizona Board of Medical Examiners  
1651 East Morton, Suite 210  
Phoenix, AZ 85020

Telephone: (602) 255-3751, Ext. 2712

Fax: (602) 870-5297

10. **The time, place, and nature of the oral proceedings for the adoption, amendment, or repeal of rule:**

No public hearing has been scheduled. Written requests for a hearing will be accepted until the close of the record. The Board of Medical Examiners will accept written comments which are received by 5 p.m. on January 11, 2000, or which are postmarked by that date. The comment period will end and the record will close at 5 p.m. on January 11, 2000. All requests and comments should be made to the individual listed in question #9 above.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules:**

None.

12. **Incorporations by reference and their location in the rules:**

None.

13. **The text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 16. BOARD OF MEDICAL EXAMINERS**

**ARTICLE 1. GENERAL PROVISIONS**

Sections

R4-16-102. Rehearing or Review of Board Decision

R4-16-106. Step 3 of the United States Medical Licensing Examination: Application

R4-16-107. General Applicants: Application

R4-16-108. Locum tenens and Pro bono Applicants: Application

**ARTICLE 1. GENERAL PROVISIONS**

**R4-16-102. Rehearing or Review of Board Decision**

~~A.~~ Except as provided in Subsection C, any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this Subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.

~~B.~~ A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within ten days after service of such motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

~~C.~~ A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

- ~~1. Irregularity in the administrative proceedings of the, agency or its hearing officer, or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;~~
- ~~2. Misconduct of the Board, or its hearing officer, or the prevailing party;~~
- ~~3. Accident or surprise which could not have been prevented by ordinary prudence;~~
- ~~4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;~~

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5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  7. That the decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in Subsection C. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E.** Not later than ten days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefor.
- F.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding twenty days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** If in a particular decision the Board makes a specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- H.** For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. §41-1001.
- I.** To the extent that the provisions of this Rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Board, such statutory provisions shall govern.
- A.** A motion for rehearing or review shall be filed as follows:
1. Except as provided in subsection (B), any party in a contested case who is aggrieved by a decision of the Board may file a written motion for rehearing or review of the decision, specifying generally the grounds upon which the motion is based.
  2. A motion for rehearing or review shall be served and filed no later than 15 days after service of the decision of the Board.
  3. For purposes of this Section, "service" means personal delivery or mailing by certified mail to the party affected at the party's last known residence or place of business. Personal service means delivery upon the Board or party. Mailing by certified mail includes every type of service except personal service and is complete on mailing.
  4. For purposes of this Section, a document is deemed filed when the Board receives the document.
  5. For purposes of this Section, the terms "contested case" and "party" shall have the same meaning as in A.R.S. § 41-1001.
- B.** If the Board makes specific findings that it is necessary for a particular decision to take immediate effect to protect the public health and safety, or that a rehearing or review of the decision is impracticable or contrary to the public interest, the decision may be issued as a final decision without opportunity for rehearing or review and shall be a final administrative decision for purposes of judicial review.
- C.** A written response to a motion for rehearing or review may be served and filed within 10 days after service of the motion by another party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- D.** A rehearing or review of a decision may be granted for any of the following cases materially affecting the rights of the moving party:
1. Irregularity in the administrative proceedings by the Board, its hearing officer, or the prevailing party, or any ruling or abuse of discretion, that deprives the moving party of a fair hearing.
  2. Misconduct of the Board, its hearing officer, or the prevailing party.
  3. Accident or surprise that could have not been prevented by ordinary prudence.
  4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the original hearing.
  5. Excessive or insufficient penalties.
  6. Error in the admission or rejection of evidence, or other errors of law that occurred at the hearing.
  7. The decision is the result of a passion or prejudice.
  8. The decision of findings of fact are not justified by the evidence or are contrary to law.
- E.** A rehearing or review may be granted to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision.
- F.** A rehearing or review, if granted, shall be only a rehearing or review of the question or questions with respect to which the decision is found erroneous, if separable. An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted.

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- G.** Not later than 15 days after a decision is issued, the Board of its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a timely served motion for a rehearing or review, for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.
- H.** If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. The opposing party has 10 days after service to serve opposing affidavits. This period may be extended for as many as 20 days either by the Board for good cause shown, or by the parties by written stipulation. The Board may permit reply affidavits.

**R4-16-106. Application for Licensure**

- A.** In this Article, unless otherwise specified, the following terms mean:
1. "ECFMG" means Educational Commission for Foreign Medical Graduates.
  2. "FLEX" means Federation Licensing Examination.
  3. "LMCC" means Licentiate of the Medical Council of Canada.
  4. "Medical Condition" means the following physiological, mental or psychological conditions or disorders: (a) chronic and uncorrected orthopedic, visual, speech, and hearing impairments or, (b) cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, HIV disease, tuberculosis, or (c) specific learning disabilities, dementia, alzheimers, bipolar disorder, schizophrenia, paranoia, or any psychotic disorder.
  5. "SPEX" means Special Purposes Examination.
  6. "USMLE" means United States Medical Licensing Examination.
- B.** An applicant for licensure to practice medicine by endorsement, or by step 3 of the USMLE, or by endorsement with the SPEX shall submit the following information on an application form provided by the Board:
1. Applicant's full name, social security number, business and home addresses, business and home telephone numbers, and date and place of birth;
  2. Names of the states or provinces in which the applicant has applied for or has been granted a license or registration to practice medicine, including license number, date issued, if known, and current status of the license;
  3. Whether the applicant has had an application or medical license denied or rejected by another state or province licensing board, and if so, an explanation;
  4. Whether any disciplinary or rehabilitative action has ever been taken against the applicant by another state licensing board, including other health professions, and if so, an explanation;
  5. Whether any disciplinary actions, restrictions, limitations have been taken against the applicant while participating in any type of training program or by any health care provider;
  6. Whether the applicant has been found to be in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
  7. Whether the applicant is currently under investigation by any medical board or peer review body, and if so, an explanation;
  8. Whether the applicant has ever had a medical license disciplined resulting in a: revocation, suspension, limitation, restriction, probation, voluntarily surrender, cancellation during an investigation, or entered into a consent agreement or stipulation, and if so, an explanation;
  9. Whether the applicant has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;
  10. Whether the applicant has been named as a defendant in a malpractice matter currently pending or which resulted in a settlement or judgement against the applicant, and if so, an explanation;
  11. Whether the applicant has been convicted of insurance fraud or received sanctions, including restriction, suspension, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
  12. Whether the applicant has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency;
  13. Whether the applicant, within the last 5 years, has or had a medical condition that impairs or limits the applicant's ability to safely practice medicine, and if so, an explanation;
  14. Whether the applicant is currently engaged in the illegal use of any controlled substance habit forming drug or prescription medication, and if so, an explanation;
  15. Whether the applicant has consumed intoxicating beverages resulting in the applicant's present ability, to exercise the judgement and skills of a medical professional, being impaired or limited, and if so, an explanation;
  16. Whether the applicant has been found guilty or entered into a plea of no contest to a felony, or misdemeanor involving moral turpitude in any state, and if so, an explanation;
  17. A complete listing of the applicant's internships, residency and fellowship training;
  18. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
  19. The applicant's intended specialty;
  20. Consistent with the Board's statutory authority, such other information as the Board may deem necessary to fully evaluate the applicant;
  21. A photograph of passport quality no larger than 2 ½ X 3 inches taken not more than 60 days before the date of application; and

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22. A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and providing release of any required records or documents to complete application review.
- C.** In addition to the application form, an applicant for licensure to practice medicine by endorsement, or by step 3 of the USMLE, or by endorsement with the SPEX shall submit the following:
1. Certified copy of the applicant's birth certificate or the applicant's passport;
  2. Certified evidence of legal name change if the applicant's legal name is different from that shown on the document submitted in accordance with subsection (B)(1);
  3. Complete list of all hospital affiliations and employment for the past 5 years;
  4. Verification of any malpractice matter currently pending or resulting in a settlement or judgement against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgement. The notice must contain the name and address of each defendant, the name and address of each plaintiff, the date and location of the occurrence which created the claim and a statement specifying the nature of the occurrence resulting in the malpractice action; and
  5. The required fee or fees.
- D.** In addition to the requirements of subsection (A) and (B), an applicant for licensure to practice medicine by endorsement, or by step 3 of the USMLE, or by endorsement with the SPEX shall have the following directly submitted to the Board:
1. All of the forms included with the application which are to be completed by persons other than the applicant, including form 1, medical college certification; form 3, postgraduate training certification; form 3a, clinical instructor certification; form 4, ECFMG certification if applicant is an international graduate, federation of state medical boards disciplinary search, American medical association physician profile, and verification of American board of medical specialty certification, if applicable;
  2. Examination and board history report to obtain scores for USMLE, FLEX, and SPEX;
  3. Verification of LMCC exam score, state written exam score, or national board exam score;
  4. Verification of licensure from every state in which the applicant has ever held a license; and
  5. Verification of all hospital affiliations and employment for the past 5 years. This must be submitted by the verifying entity on their official letterhead.

**R4-16-107. Application for Pro Bono Registration**

- A.** An applicant for a pro bono registration to practice medicine shall submit an application on a form provided by the Board that provides the information required by R4-16-106(B).
- B.** In addition to the application form, an applicant for a pro bono registration to practice medicine shall submit the following:
1. Certified copy of the applicant's M.D. degree diploma;
  2. Certified copies of internship, residency or fellowship certificates;
  3. Photocopy of license to practice medicine in another state, territory or possession of the United States or the District of Columbia, which remains current and in good standing, along with a letter from the medical board which issued the license, certifying that the license is current and in good standing;
  4. Certified copy of ECFMG certificate, if applicable;
  5. The required fee or fees.
- C.** In addition to the requirements of subsection (A) and (B), an applicant for pro bono registration shall have the following directly submitted to the Board:
1. American Medical Association physician profile;
  2. Federation of State Medical Boards disciplinary search; and
  3. Verification of licensure from every state in which applicant has ever held a license.

**R4-16-108. Application for Locum Tenens Registration**

- A.** An applicant for a locum tenens registration to practice medicine shall submit an application on a form provided by the Board that provides the information required by R4-16-107(A).
- B.** In addition to the application form, an applicant for a locum tenens registration to practice medicine shall submit the following:
1. Certified copy of the applicant's M.D. degree diploma;
  2. Certified copies of internship, residency or fellowship certificates;
  3. A statement completed by the sponsoring Arizona licensed physician setting forth the reason for the request for issuance of such registration; and
  4. Certified copy of ECFMG certificate, if applicable.
- C.** In addition to the requirements of subsection (A) and (B), an applicant for locum tenens registration shall have the following directly submitted to the Board:
1. American Medical Association physician profile;
  2. Federation of State Medical Boards disciplinary search; and
  3. Verification of licensure from every state in which applicant has ever held a license.